



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21-73; RM-11889; DA 21-270; FR ID 17558]

Television Broadcasting Services Toledo, Ohio

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Video Division has before it a petition for rulemaking filed November 27, 2020 (Petition) by Dominion Broadcasting, Inc. (Petitioner), the licensee of WLMB (IND), channel 5, Toledo, Ohio (WLMB or Station). The Petitioner requests the substitution of channel 35 for channel 5 at Toledo, Ohio in the DTV Table of Allotments.

DATES: Comments must be filed on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and reply comments on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street, N.E., Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joseph C. Chautin, III, Esq., Hardy, Carey, Chautin & Balkin, LLP, 1080 West Causeway Approach, Mandeville, LA 70471.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Division, Media Bureau, at (202) 418-2324 or Shaun.Maher@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 21-73; RM-11889; DA 21-270, adopted March 4, 2021, and released March 4, 2021. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print,

computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418-0530 (VOICE), (202) 418-0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission’s rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission’s rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

In support of its channel substitution request, the Petitioner states that, since the Station transitioned to channel 5 in 2008 in conjunction with the Commission’s digital television transition, it has regularly received complaints from viewers unable to receive the Station’s over-the-air signal. Petitioner states that these issues have “continued unabated” for twelve years. Petitioner further states that it “has been forced to constantly scramble to retain viewers with a variety of methods, some costly.” Petitioner maintains that these propagation problems have put WLMB at a distinct competitive disadvantage to the other stations broadcasting in the Toledo market. Petitioner states that the Commission has long since recognized that “VHF channels have certain characteristics that have posed challenges for their use in providing digital television service” and that the Station’s experience is no different.

To remedy its propagation problems, Petitioner proposes substituting UHF channel 35 for VHF channel 5. Petitioner provides an Engineering Statement that it claims confirms that, with WLMB's proposed parameters, including a 375 kW ERP, channel 35 can be substituted for channel 5 at Toledo, Ohio, in compliance with the Commission's rules. Petitioner states that the proposed facility would continue to provide a principal community contour completely covering WLMB's community of license and would not cause impermissible interference to any station.

Petitioner contends that the Engineering Statement also confirms that WLMB's channel 35 contour would be fully contained within the Station's existing channel 5 contour and would continue to reach what Petitioner characterizes as a "substantial majority" of the population within the Station's current service area, including fully covering the City of Toledo. Petitioner concedes that an analysis using the Commission's TVStudy indicates that WLMB's move from channel 5 to channel 35 would create a predicted interference-free population loss of 735,018 persons. However, Petitioner maintains, the majority of that population is located in the densely populated Detroit metropolitan area, which is outside of the Toledo, Ohio Nielsen Designated Market Area (DMA). Furthermore, Petitioner continues, when terrain limitations and other over-the-air television services are taken into account, nearly all viewers predicted to lose access to WLMB's signal would continue to be "well served" as they would continue to have access to at least five full power or Class A television signals. Petitioner calculates that only 388 people are predicted to live in portions of a "very small new loss area" that would not otherwise be well-served. Petitioner asserts, however, that even those viewers would not lose access to their only over-the-air television service, as they continue to receive three full power or Class A television signals.

Petitioner claims that the Commission will approve a proposed channel substitution that includes a loss of service if the proposal is "supported by a strong showing of countervailing public interest," such as offsetting service gains. Given the persistent feedback WLMB has received about reception issues within the Station's core coverage area, Petitioner maintains that any "nominal population loss" in outlying areas of the station's contour would be more than outweighed by the

substantial improvement in the Station's actual over-the-air reception within its community of license and in other core portions of its service area. Petitioner concludes that the proposed substitution of channel 35 therefore would serve the public interest by giving Toledo-area residents greater, more reliable access to WLMB's free over-the air signal, with few if any viewers losing access to robust over-the-air service.

We believe that Petitioner's channel substitution proposal warrants consideration. Channel 35 can be substituted for channel 5 at Toledo, Ohio, as proposed, in compliance with the principal community coverage requirements of § 73.625(a) of the Commission's rules (rules), 18 at coordinates 41-44-41 N and 084-01-06 W. In addition, we find that this channel change meets the technical requirements set forth in §§ 73.616 and 73.623 of the rules. Given its location, we note that Petitioner's proposal is subject to coordination with Canada. Although substituting channel 35 for channel 5 would result in a loss of service to approximately 735,018 persons, we agree with Petitioner that the loss area is "well-served" by at least five other television stations. Further, although Petitioner's proposal would result in a loss of service to approximately 388 people that would not otherwise be "well-served," we find such a loss area to be de minimis.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,
Chief of Staff,
Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73 - - RADIO BROADCAST SERVICE

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. In § 73.622(i), amend the Post-Transition Table of DTV Allotments under Ohio by revising the entry for Toledo to read as follows:

§ 73.622 Digital television table of allotments.

(i) ***

Community	Channel No.

Ohio	

Toledo	11, 13, *29, 35, 46, 49
